

SENATE BILL 2974  
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, relative to the offense of driving under the influence of an intoxicant and refusing to submit to certain tests to determine the alcohol or drug content of a driver's blood or breath.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-406, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) Any person who drives a motor vehicle in this state is deemed to have given consent to a test for the purpose of determining the alcoholic or drug content of that person's blood if such test is administered at the direction of a law enforcement officer having reasonable grounds to believe such person is in violation of Tennessee Code Annotated, Section 55-10-401.

(2) Upon the written request of a law enforcement officer, the following people are authorized to withdraw blood for the purpose of administering such test:

- (A) Any physician;
- (B) Registered nurse;
- (C) Licensed practical nurse;
- (E) Clinical laboratory technician;

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(F) Licensed paramedic;

(G) Licensed emergency medical technician approved to establish intravenous catheters;

(H) Technologist; or

(I) Certified and/or nationally registered phlebotomist.

(3) A person listed in subpart (2) of this subsection who withdraws blood in accordance with such subpart shall not incur any civil or criminal liability as a result of the withdrawing of such blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the previously listed health care professionals incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person.

(b) Any law enforcement officer who requests that the driver of a motor vehicle submit to a test pursuant to this section for the purpose of determining the alcoholic or drug content of the driver's blood shall, prior to conducting such test, advise the driver that refusal to submit to such test will result in the revocation of the driver's operator's license by the department of safety. The department shall not have the authority to revoke the license of a driver who refused to submit to the test if such driver was not advised of the consequences of such a refusal.

(c) If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to such test and advised of the consequences for refusing to do so, refuses to submit, the test shall not be given and such person shall be charged with violating this section. The determination as to whether a driver violated the provisions of this section shall be made by the department of safety in accordance with the provisions of Tennessee Code Annotated, Title 55, Chapter 10, Part 8. A violation of this section is punished by driver license revocation for a period of twelve (12) months.

(d) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or is otherwise in a condition rendering that person incapable of refusal, shall be subjected to the test as provided for by §§ 55-10-405 - 55-10-412, but the results thereof shall not be used in evidence against that person in any court or before any regulatory body or the department of safety without the consent of the person so tested. Refusal to release the evidence so obtained will result in the revocation of that person's driver license, thus such refusal of consent shall give such person the same rights of hearing and determinations as provided for conscious and capable persons in this section.

(e) Nothing in this section shall affect the admissibility in evidence of any chemical analysis of the alcoholic or drug content of the defendant's blood in a criminal prosecution for aggravated vehicular homicide, vehicular homicide or vehicular assault if such evidence has been obtained by any means lawful without regard to the provisions of this section.

SECTION 2. Tennessee Code Annotated, Title 55, Chapter 10, is amended by adding the following as a new Part 8:

**Section 55-10-801.** As used in this part unless the context clearly requires otherwise:

(1) "Department" means the Tennessee department of safety;

(2) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(3) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;

(4) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(C) Any nonresident's operating privilege as defined herein;

(5) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(6) "Revocation" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in Tennessee Code Annotated, Section 55-10-806; and

(7) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

**Section 55-10-802.**

(a) The department shall revoke the license of any person upon its determination that the person refused to submit to a test to determine the drug or alcoholic content of such person's blood after being requested to do so by a law enforcement officer as provided in Tennessee Code Annotated, Section 55-10-406.

(b) The department shall make an administrative review and a determination of these facts on the basis of the report of a law enforcement officer required in Tennessee Code Annotated, Section 55-10-803, and this determination shall be final unless a hearing is requested and held under Section 55-10-809.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

**Section 55-10-803.**

(a) A law enforcement officer who charges a person with a violation of Tennessee Code Annotated, Section 55-10-406, shall, within five (5) working days, forward to the department:

- 1) A sworn report of all information relevant to the enforcement action, including information which adequately identifies the violator and contains a statement of the officer's grounds for belief that the person violated Tennessee Code Annotated, Section 55-10-406;

- 2) A copy of the citation;

- 3) A copy of the completed notice of revocation form;

- 4) A copy of any completed temporary permit form; and

- 5) Any driver license taken into possession pursuant to Section 55-10-805.

(b) The report required by this section shall be made on forms supplied by the department. The department shall provide forms for Notice of Proposed Revocation and for temporary permits to law enforcement agencies.

(c) The report required by this section shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part.

**Section 55-10-804.**

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in Tennessee Code Annotated, Section 55-10-802.

(b) If the notice of proposed revocation is not personally served on the person pursuant to Section 55-10-805(a), it shall be mailed to the person at the address provided in the enforcement officer's report if such address differs from the address of record. The notice of proposed revocation is deemed delivered three (3) days after mailing.

(c) The notice of proposed revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request a hearing, and the procedure for requesting a hearing.

**Section 55-10-805.**

(a) Whenever a person refuses to submit to a test for the purpose of determining the drug or alcoholic content of such person's blood, the officer, acting on behalf of the department, shall serve the notice of proposed revocation personally on such person.

(b) When the law enforcement officer serves the notice of proposed revocation, the officer shall take possession of any driver license issued by the state which is held by the person. When the officer takes possession of a valid driver license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for forty-five (45) days after its date of issuance and which shall constitute a receipt for the temporary permit. If determination has not been made by the department under the provisions of Section 55-10-804 within forty-five (45) days of the initial seizure of license, the driver may apply for a restricted license, as provided for in Section 55-50-502.

(c) Only law enforcement officers who have satisfactorily completed a recruit training program, approved by the Tennessee peace officers standards and training commission may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license and issuing a temporary permit as authorized by this section.

**Section 55-10-806.**

(a) The license revocation shall become effective forty-five (45) days after the person has received the notice of proposed revocation as provided in Section 55-10-805 or 55-10-804(b).

(b) The period of license revocation for a violation of Tennessee Code Annotated, Section 55-10-406 shall be twelve (12) months.

(c) Persons who have no prior record of license revocation for a violation of Tennessee Code Annotated, Section 55-10-406 or a revocation entered in any other state for refusal to submit to blood alcohol testing under an implied consent law shall be eligible for a restricted driver license as provided in Tennessee Code Annotated, Section 55-50-502, after a minimum revocation period of sixty (60) days.

(d) Where a license is revoked under this part and the person is also convicted on criminal charges arising out of the same occurrence for a violation of Tennessee Code Annotated, Section 55-10-401, both the revocation under this section and the revocation under Section 55-10-403, shall be imposed. The period of revocation for the criminal conviction shall commence as provided in Tennessee Code Annotated, Section 55-50-502(a)(1).

**Section 55-10-807.**

(a) The period of revocation specified by Section 55-10-806 is intended to be a mandatory period of revocation for a violation of Tennessee Code Annotated, Section 55-10-406. No license shall be restored under any circumstances and no restricted driver license shall be issued during the revocation period, except as provided in Section 55-10-806(c).

(b) No driving privilege may be restored until all applicable reinstatement fees have been paid and all requirements of Tennessee Code Annotated, Title

55, Chapter 12, have been satisfied. The restoration fee for a license revoked pursuant to Section 55-10-806 is one hundred dollars (\$100).

(c) Any person who has received a notice of proposed revocation under Section 55-10-805 and whose driver license is finally revoked pursuant to this part shall, prior to the return of such driver license, be required to pay to the department of safety an administrative review and processing fee of fifty dollars (\$50.00).

**Section 55-10-808.**

(a) Upon receipt of the information provided by the law enforcement officer as required in Section 55-10-803(a), the department shall automatically conduct an administrative review and make a determination pursuant to Section 55-10-802.

(b) In such review, the department shall give consideration to all available information. If the department determines by a preponderance of the evidence that the person refused to submit to a test for the purpose of determining the alcoholic or blood content of such person's blood when requested to do so by a law enforcement officer, the department shall sustain the order of revocation. If the evidence does not support such determination, the department must immediately rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under Section 55-10-809.

(c) The department shall make a determination upon administrative review at least five (5) days prior to the effective date of the revocation order. If the department is unable to make a determination within the time limits specified, it shall stay the revocation pending such determination and shall give notice of the stay to such person. If the department rescinds the revocation, the



department shall return, by registered mail, return receipt requested, the person's driver license.

**Section 55-10-809.**

(a) Any person who has received a determination upon administrative review may, within twenty (20) days of receipt of the notice, make a written request for a hearing on forms provided by the department to the address provided on the form. If the person's driver license has not been previously surrendered, it must be surrendered at the time that request for hearing is made. A request for hearing does not stay the license revocation.

(b) The hearing shall be scheduled for a date within thirty (30) days of receipt of the request for a hearing. The hearing shall be held at the regional Highway Patrol headquarters closest to the location where the alleged violation of Tennessee Code Annotated, Section 55-10-406 occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person refused to submit to a test to determine the alcoholic or drug content of such person's blood when requested to do so by a law

enforcement officer. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy shall be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in other administrative hearings before the department and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(h) The department of safety shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this section, when the department of safety subpoenas the governmental agency's representative.

#### **Section 55-10-810.**

(a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 55-10-809, a person aggrieved by the determination shall have the right to file a petition for judicial review in the chancery court of Davidson County. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and

capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

**Section 55-10-811.** The Tennessee Uniform Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5, applies to the extent it is consistent with proceedings under Sections 55-10-809 and 55-10-810 relating to the administrative hearing and judicial review.

**Section 55-10-812.** For the purpose of implementing the provisions of this part, the commissioner of safety is directed to apply for all applicable federal funding.

**Section 55-10-813.** The implementation and effectiveness of this part shall be subject to a mandatory review not later than four (4) years after it becomes a law. The review shall be conducted by the department of safety and shall include a survey of license revocations, citizen complaints, law enforcement personnel opinions, and an estimate of the effect of this part on reducing violations of Tennessee Code Annotated, Section 55-10-406.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect January 1, 1999, the public welfare requiring it.